

Copyright protection in China: Part I

Copyright is a form of intellectual property (IP) that protects a creator's exclusive right to control who reproduces or alters the product of their original creative effort. Copyright protects the producers of any original work, and is relevant to almost all businesses, not just those in the creative industry. Adequate copyright protection can form an important part of an IPR protection strategy. Businesses regularly create articles, photographs, drawings, designs, models, websites, computer software, to name just a few, which all enjoy copyright protection. Copyright is an automatic right that arises the moment a work is created. This two-part article series describes copyright protection in China with this first installment outlining what can be protected as copyright and why taking care to do so can prove beneficial to your business in China.

Once a work is created, in most cases, the creator will automatically enjoy copyright protection in all 164 member countries of the Berne Convention for the Protection of Literary and Artistic Works, including all European Union countries and China. Voluntary registration for your copyright is available in China. Though your work is automatically protected by copyright the moment it is created, voluntary registration will provide proof of ownership, which can save you time and money in case of a dispute later on. For copyrights that are particularly important to the livelihood of your business (ie, website, software, catalogue and customer database), you should strongly consider registering your copyright.

What kinds of works are protected by copyright?

Copyright protects original creative expressions of ideas that exist in a fixed medium such as on a piece of paper, on an artist's canvas, on an optical disc, or on magnetically recordable media. Copyright protects only the expression of an idea, not the idea itself. Ideas include thoughts, feelings, procedures, methods of operation, or mathematical concepts, and other products of creative and intellectual endeavors. For example, your written description in a book about Albert Einstein's *Theory of Relativity* is protectable by copyright as an expression, but the ideas, concepts, and principles behind Albert Einstein's *Theory of Relativity* are not.

Traditional types of creative works such as books, music, recordings, plays, films, paintings, sculptures, photographs, etc, enjoy copyright protection in China. Other works such as works of choreography, acrobatics, calligraphy, *quyi* (a traditional Chinese performance art form), model works, and databases and compilations as to the selection and arrangement of content also enjoy copyright protection in China. The basic principle of a copyright is that the work be original and reproducible.

Unlike Europe where computer software is protected by patents, software is expressly protected under copyright in China. Industrial and graphic designs, applied art, architectural buildings are also protected by copyright.

How is copyright relevant to my business?

Nearly every business across all industries and sectors possess copyright. A common misconception is that copyright is only relevant to content producing businesses, eg, publishing firms, music distributor, film production companies. Copyright enables you to help protect against others taking credit for your creative work and using it as their own for economic gain and unfair business advantages. Businesses in all industries should take steps to identify their existing copyrights and consider registering the most important ones as part of a holistic IPR protection strategy. The proof of ownership you obtain from registering your copyright may save you time and money later on in case of a copyright dispute.

Why should copyright be an important part of my IPR strategy?

Copyright can form an important part of IP protection strategies, both as a main protection for content, and as a supplementary tool to enforce alongside other IP rights, such as design patents or trademarks. For example, if someone has copied your logo, which happens to be a unique graphic design before your trademark registration is granted, you still have the option of trying to stop the infringer based on your ownership of the copyright protecting the logo. However, please note that enforcement through copyright is a weaker enforcement tool than a registered trademark or other rights and should be considered complementary to other tools. If your existing design patent or trademark is also eligible for copyright protection, you also have the option of a multiple protection approach by registering the design patent and/or trademark as a copyright as well. This will provide you with additional enforcement alternatives if confronted with infringement.

To start integrating copyright protection into your company's overall IP strategy, ask yourself the following questions:

- What works of mine are already protected by copyright?
- Who in my company owns those copyrights? Is it myself or the creative mind that first created it?
- Does my company's standard employee contract include a clause about copyright ownership to decrease the chances of a potential copyright disputes?
- Which one of those already copyrighted works are the most important to the livelihood of my company?
- Which one(s) should I voluntarily register for?
- Should I consider hiring a monitoring service to make sure my copyrights are not being infringed?

Your company may own more copyrights than you initially think. Graphic designs in your brochure or catalogue, images and photographs of your products, company website and its content, customer databases, standard operating procedure documents and even Emails are all considered creative works. Infringement of those works can result in brand dilution, lost customer loyalty and lost profits for your business.

How long does my copyright protection last?

The period of copyright protection is generally 50 years from the date of creation or publication, or in the case of individuals, the lifetime of the author plus 50 years.

Take-away message:

- Copyright defines a broad range of creations in China; particular care should be taken to protect works – such as software - which are usually protected by other intellectual property types in Europe.
- Voluntary registration of copyright can be used not only as documentation of your creative endeavours, but also as evidence in disputes over infringement and so should be considered as an important aspect of your IPR strategy; if your intellectual property is not registered in China it can be extremely difficult to protect.
- *Look out for March 2014's edition of INSME News for part II which will outline how copyright ownership is determined, how copyright can be registered and detail how you can enforce your rights in China.*

The China IPR SME Helpdesk is a European Commission funded project that provides free, practical, business advice relating to China IPR to European SMEs. To learn about any aspect of intellectual property rights in China, visit our online portal at www.china-iprhelpdesk.eu. For free expert advice on China IPR for your business, e-mail your questions to: question@china-iprhelpdesk.eu. You will receive a reply from one of the Helpdesk experts within seven working days. The China IPR SME Helpdesk is jointly implemented by DEVELOPMENT Solutions and the European Union Chamber of Commerce in China.